

## BOOK REVIEWS

AMERICAN FAMILY LAWS (Vol. IV). PARENT AND CHILD. By Chester G. Vernier, assisted by E. Perry Churchill. Stanford University Press, California, 1936. Pp. xxi, 496. Price: \$5.00.

This book on Parent and Child is volume four of a work on American Family Laws. Previous volumes have dealt with other parts of the general subject: volume I<sup>1</sup> with Marriage; volume II with Divorce; and volume III with Husband and Wife. The present volume contains thirty-nine sections and deals with such topics as custody and control (together with earnings and property) of the child, his emancipation (by cross reference to volume V), his support (including education and protection), his duties and obligations to his parents and other relatives, suits by and against the child, domicile of the child, inheritance, legitimacy and legitimation, bastards, seduction (civil and criminal liability), adoption, torts (by third persons to child and to parent, and between parent and child), step-children, and certain miscellaneous matters (such as liability of the parent for the child's torts, parent or child as accessory after the fact, family allowance, substitution of children, privileged information between teacher and child, and mother's aid). In addition, there are seventeen comparative tables of legislation. The law of infancy, apart from these topics, is not treated; presumably it will be treated in a later volume. The arrangement of the book follows the plan used in the previous volumes. In general, each section contains: (1) a brief summary of common law; (2) a treatment of statutes; (3) certain comment and criticism; (4) bibliographical material, including selected references to textbooks, casebooks, annotations, reports, and law review articles and case notes.

Limitations which seem inherent in a work of this kind may be mentioned. The common law is dealt with in very brief summaries. Although the subject of persons and domestic relations has been much affected by statutes, nevertheless almost every topic has a non-statutory, if not strictly common-law background. The law of Parent and Child particularly (except a few topics, adoption for example) has a common law basis. Moreover, there is the almost inescapable necessity and importance of judicial application of statutory rules. Soon there develops a body of judicial decisions which, although interpreting and construing statutes, follow characteristic judicial technique. For lawyers dealing with specific legal problems, the present work states too summarily not simply common law, but judicial law. The table of cases for this volume on Parent and Child lists 172 decisions, seventeen of which are referred to twice. Of these 189, fifty-four are referred to in the text, eighteen in notes to the comparative tables of legislation, and 117 in the bibliographical material where they appear as subjects of law review case notes. A lawyer's interest, unless his case involves conflict of laws, is not likely to be primarily in the legislation of jurisdictions other than his own. With statutes as such, no matter how careful a comparative survey may be, he ordinarily has little interest. But judicial reasoning, even in decisions involving statutes, is of use to him in dealing with the law of his own jurisdiction. Brief common-law summaries, however excellent, cannot wholly take the place for him of a full treatise.

Within its own limits, however, the book is excellent. For lawyers and others interested in this important branch of law and of social science, especially for those interested in legislation and for teachers and students of the subject, Professor Vernier has performed an invaluable service. As has been said, the law of Persons and Domestic Relations, Parent and Child perhaps to a somewhat

---

1. Reviewed by the writer of this book review in 42 YALE L. J. 158 (1932).

less extent than some of its other branches, has been much affected by statutes. The statutes are sometimes jurisdictional, sometimes declaratory, sometimes creative of new law, substantive as well as procedural. One is accustomed to think of the number of judicial decisions in this field at common law and under statutes as enormous. The number of statutes themselves is now also very large. The comparative survey of legislation makes available in one place reference to a large amount of statutory material (for the most part on the substantive law) not readily accessible in other places. Many of the tables are annotated. The summaries and the bibliographies seem to be well done. Sometimes cases are briefly referred to in the text. The bibliographies, although select, are sufficiently comprehensive and are placed at the end of each section so classified as to make readily available not only secondary sources, but also, through references to law-review material, many of the leading as well as the recent cases. The introductory section, in effect a scope note for the whole book, the surveys of existing legislation, and the recommendations with reference to future legislation, would seem almost indispensable to persons interested in legislation. One admires the research and the learning and the industry necessary for the writing and editing of a book of this kind. Professor Vernier is to be commended also for critical insight and sense of proportion. With its combination of statement, statutory survey, annotation, critical comment, recommendation for legislation, and bibliography, this book is, in the opinion of the writer of this review, one of the most useful things that has been done in this subject.

*William E. McCurdy.*†

CASES AND MATERIALS ON CONFLICT OF LAWS. By Elliott E. Cheatham, Noel T. Dowling, and Herbert F. Goodrich. The Foundation Press, Chicago, 1936. Pp. xlv, 1148. Price: \$7.00.

This is an attractive book to a teacher of Conflict of Laws who for many years has hoped that time would bring a collection and arrangement of materials consciously adapted to develop a less mechanical, a less provincial, a more searchingly realistic approach to study of the field than that of the traditional Anglo-American method. The work is worth careful consideration by a technician in the art of compilation, for it includes some useful devices and at the same time has some defects which should be valuable lessons to practitioners of the art. Of all subjects usually included in the course of study in an American law school, perhaps the most difficult to present in compact completeness through the medium of casebook material is Conflict of Laws. There is a wide divergence of opinion and a current ardent debate concerning fundamental ideas which color one's thought and conclusions on most of the important problems in this field. Indeed much of the effective demonstration of the value of the tenets of the realistic school of law has been in the discussion of problems of Conflict of Laws. I refer, of course, to the controversy between Professor Beale and his disciples on one side and Professors Lorenzen, Cook, et al., on the other. The war has been waged concurrently on the whole Constitutional Law front and now has become enmeshed in the politics of the New Deal; but to the law teacher and scholar of the realistic school there is no field that is quite as inviting in its possibilities of forcing consideration of the issues which he thinks of the utmost importance to the profession today, as this intensely interesting and complicated field of Conflict of Laws.

Furthermore, the range of the field is as wide as the domain of private law—its cases concern the law of property, contract, tort, family relations, procedure—no interest within the broad categories of private law is beyond its scope. When

---

† Professor of Law, Harvard University.

we add to the picture the chaos of conflicting theories of the scholars of Europe and the Americas concerning the proper technical organization of knowledge of the subject, the uncertain fumbling of its problems by most lawyers and judges, and the erratic and confusing course of judicial decisions over much of the field, the difficulties of compiling a satisfactory class book become apparent. Indeed a teacher controlled by a passion for thoroughness will find it hopeless to attempt to cover in a four-hour semester course many of the topics which a casebook's table of contents usually includes—for instance that of Mr. Beale's. The omnipresent necessity of picking and choosing which faces a compiler of a casebook on any subject is peculiarly intensified here by the wide range and richness of the field, by the searching inquiry into fundamental problems of the nature of law and the meaning and proper use of current fundamental legal ideas and language which is prerequisite to adequate understanding, and by the great importance and practical interest of every subject placed by the teacher on a preliminary list from which at last he can select only a few, to be presented in part in bare outline only.

Mr. Beale's pioneer casebook was elaborated within the framework of his theories of the subject which were developed from those of Story. It emphasized strongly throughout the matter of jurisdiction (in the Anglo-American sense) which pervades the entire range of the subject in the United States because of our constitutional system; and since Mr. Beale's theory of the nature of law insists on giving both it and legal rights a territorial habitat, the location in space of things (physical and ideal) and of events at the critical time of the case problem also was given important stress. Indeed, Mr. Beale's *Conflict of Laws* became in large part an elaborate mechanical adjustment of jurisdictions peculiarly his own. Nevertheless, his pedagogical genius and his flair for selecting interesting cases produced a collection that is a valuable teaching apparatus even for those who have a radically different conception of the fundamental problems of the subject and whose theoretical exposition would clash with his at almost every opportunity. With some rearrangement of topics, I have used his larger edition throughout the many years which I have taught the subject and have found interesting material in it to develop the variant opinions which I have entertained on fundamental points. Indeed, books edited by men whose ideas come much nearer to mine I have found less suitable for my peculiar needs.

The leading competitor of Mr. Beale's book in our graduate law schools has been Professor Lorenzen's. This, especially in its earlier editions, evidences Professor Lorenzen's training abroad and his great interest in the law of certain countries of Continental Europe. In contrast to Mr. Beale's work, in selection and arrangement of topics Professor Lorenzen's reflects the influence of the methods and analyses of the Continental jurists. Although many of the problems of jurisdiction inherent in our constitutional system are presented, in the earlier editions they are not allowed to overshadow those other problems of choice of law over which have raged the academic debates of the Continental jurists who have not been concerned with our peculiar American constitutional law problems of jurisdiction. Indeed, one of the merits of Professor Lorenzen's work has been the comparatively greater attention which he has directed by his notes and articles towards Continental European and Latin American jurisprudence, legislation and theory.

This new casebook under review clearly falls in the tradition of Professor Beale's school. It is founded on the fundamental scheme of the Harvard doctrine and that of the American Law Institute's Restatement. There are, however, striking departures from the scope, arrangement and method of Professor Beale's book. Obviously we have here material for the intensive study of the *Conflict of Laws* of United States jurisdictions only. A few familiar British

cases, such as *Schibsby v. Westenholz*<sup>1</sup> and *Copin v. Adamson*<sup>2</sup> are printed, but the design to confine the study mainly to our own law is quite clear. The great wealth of Anglo-American case law to which Mr. Beale introduces the student is missing. And this raises at once an impression of provincialism in the critic—an impression that is not dispelled by the excellent brief notes of Arthur Nussbaum and the various excerpts from textbooks and magazine articles concerning the law and juristic theories of Continental Europe; for these passages, though useful, are scant bases for student interest in the learning to which they refer. Especially the junking of the historical method of study of the several topics implied in the omission of leading British cases so effectively used by Beale and the loss of the advantage of critical comparison of the English law with our law on many topics which these cases afforded will be regretted by able teachers in our graduate schools. Of course, however, the reasons of expediency which undoubtedly caused the exclusion of these cases will be appreciated. The great advantage of this new book over Beale's lies in a more compact arrangement with perhaps a gain rather than a loss in range of particulars covered. If one familiar with Mr. Beale's book wishes a quick test of these matters of compactness and ordered range of details, he has only to glance over the table of contents of Chapters II, III and IV on jurisdiction and judgments and compare the widely scattered more voluminous materials of Mr. Beale on the same general topics, which leave many of the details of analysis of the new book wholly untouched. Many teachers will question, however, whether the editors of the new book were wise in not emphasizing in these early chapters the matter of jurisdiction in rem, as Mr. Beale does. This phase of a state's jurisdiction is so pervasively important throughout the field of Conflict of Laws that the student should have it called to his attention emphatically early in the course. The slight indirect reference to it in the opinion of *Pennoyer v. Neff*<sup>3</sup> is not a satisfactory introduction of the topic. Indeed I do not see how a complete critical appreciation of *Pennoyer v. Neff* can be made without some preliminary knowledge of the traditional law of a state's jurisdiction in rem. That case is a difficult one to appreciate at best. Certainly to ask a student to master it right at the start of his course, after reading only one case previously—*Schibsby v. Westenholz*—is much like the drastic methods of the old swimming hole. Apparently the fundamental study of jurisdiction in rem is postponed to Chapter XI on Property.

Again, although one keeps in mind this desirable purpose of compactness and economy of time, it is difficult to approve of the scant material on the topic of domicile which also is postponed to the latter half of the casebook. If a class book is to contain the essential core of material from which the student is to draw his inferences of the law and formulate the ideas on which he is to base his thinking in preparation for class discussion, one cannot agree that the editors have treated students quite fairly in this sub-section of sixteen pages, containing three cases, some fragmentary, quite insufficient footnotes, and an excerpt from the proceedings of the American Law Institute. Certainly no great amount of classroom time should be devoted to a study of the law of domicile in spite of the importance of the topic; but certainly also, in some way, through commentary or case material or both, clear and adequate information should be given the student for his class work of the idea, importance and criteria of determination of domicile.

What good purpose in this connection is served by the passage quoted from the Proceedings of the American Law Institute, I have been unable to deter-

---

1. L. R. 6 Q. B. 155 (1870).

2. L. R. 9 Exch. 345 (1874).

3. 95 U. S. 714 (1877).

mine. This passage contains a fragment of an informal debate between Professor Walter Wheeler Cook and Professor Austin W. Scott which enlivened the discussion of some proposed sections of the Restatement of Conflict of Laws. How the average student is to acquire any but shreds of ideas of the elements of this controversy or the merits of either side of the argument from this quoted passage does not fall within the limits of my imagination. Certainly it is very unfair to either Mr. Scott or Mr. Cook to ask the student to believe that the quoted statements represent adequately their views on the problems suggested to one familiar with the controversy. I happen to sympathize with Mr. Cook's views and, in common with most critical teachers of Conflict of Laws who are not faithful followers of Mr. Beale, I think that the definition of domicile in the Restatement is incorrect as an indication of traditional usage of the term in legal discussion, is quite unclear to one not familiar with the topic, and is indeed utterly futile. Mr. Scott's quoted statement was in a sense a political rather than a scholarly one. It was a very skillful maneuver, reminiscent of the best traditions of English parliamentary debates, to overcome a temporary obstruction in the smooth course of expeditious adoption of the product of the labors of the reporter by a numerous assemblage of lawyers containing only a few experts. Obviously adequate scholarly examination of the details of the problems suggested by Mr. Cook's remarks by such a body of men in the very small amount of time which could be devoted to the discussion of this one of some hundreds of problems to be canvassed by them was impossible. Mr. Scott's remarks admirably accomplished their purpose; but that purpose was not scholarly exposition or adequate scientific rebuttal of Mr. Cook's points. Similarly, Mr. Cook's remarks do not clearly and fully give his views. They do not define the various separate problems which troubled his analytical mind. There are the distinct matters of (1) the definition of the meaning of the word domicile—a matter of language and not of law; (2) the various bases of title to domicile; (3) the importance of domicile in the many different legal relations on which it has a bearing; (4) the problem of whether domicile of a person as a matter of law is under one state for all legal purposes; (5) the question of choice of law for determination of domicile. Here is a wide range of topics for careful investigation and discussion and Mr. Cook's remarks were not designed to define these topics, much less discuss them. He attempted casually and extemporaneously only a protest against the rather cavalier, mechanistic method of approach to the problems adopted by Mr. Beale and his assistants and reflected clearly in the Restatement. Even these facts, which I have stated, are not revealed to the student by these quoted passages. What purpose then is served by inserting them in the casebook? What is the uninformed student expected to gather from them? Is it possible that any critical scholar could believe that Mr. Scott's facile argument can serve to lull to conviction a critical class of young minds clearly informed as to the details of the problems troubling Mr. Cook? It was not designed for any such purpose and it is not justice to Mr. Scott's sterling scholarship to attempt to put it to such a use.

The topics of Qualification and Renvoi<sup>4</sup> are treated in a similarly cavalier manner, but here there is some justification for the treatment. The casebook material gives the student no adequate basis for building his own ideas of the problems or the merits of the controversial views involved. If the general problem and the adequacy of the Restatement Secs. 7-8 quoted on page 638 are to be discussed at this point in the course, a summary text treatment of the topics setting forth completely the various types of problems presented by the cases and the various arguments concerning them, with references to the literature and leading cases would have been much more useful than the prejudicial

---

4. At pp. 635-649.

fragmentary material offered here. Of course, the footnote references on page 645 open to the student a wide avenue of knowledge, but it can scarcely be hoped that the average student will read all these articles in preparation for the recitation, although he may do so afterwards if sufficiently interested in the topic as a result of the class discussion. However, perhaps the problems of testate and intestate succession to movables, which are those particularly treated in this section of the casebook, are sufficiently introduced by the two cases reprinted—*Matter of Tallmadge*<sup>5</sup> and *Re Ross*.<sup>6</sup> Certainly, the argument of economy of space and time can be used to support this view and also to justify bringing in collaterally at this point the general discussion of the Renvoi and Qualification theories. The quotation from the Restatement on page 638 may serve merely to suggest the general topic, which the instructor can then implement after his own fashion by exposition and questions and hypothetical problems put to the class.

The footnotes are numerous and copious in references to other materials, especially articles and notes in legal periodicals. They also propose instructive questions which will be of value to a new teacher of the subject as well as to students. However, some of the questions will be unintelligible perhaps to the average student until the class discussion has developed fully the details of the law surrounding the principal case; and some perhaps are too forward in bringing out points which would better be left to development by the student's own thoughtful study. The notes also contain brief abstracts of additional cases for comparison and further elucidation. There is a difference of opinion among teachers as to the value of some of these note devices—especially the guiding questions. I am inclined to favor them, but certainly great skill is necessary to confine them to desirable tendencies and avoid objectionable pedagogical influences. A sound, intelligent appreciation of the law is evident throughout the footnotes in this book, but I am not sure that sound pedagogical judgment has been shown in some of their details.

I hope that I have not given an untrue picture of my appreciation of this book by my emphasis on criticism. I have tried to emphasize the defects of the book and have not, I fear, given as vivid an impression of its merits. This has resulted from my belief in the value of criticism. We learn both from success and from failure; but while success gives us a comfortable glow of confidence as it grooves our habits in later action, the most stimulating and valuable part of our education comes from our mistakes; and it is in the careful study of mistakes that the competent can find the most fertile material for broadening and intensifying their knowledge and skill. This applies of course to the matter of criticism itself as well as to the subject criticized.

Care and intelligence in a high degree have been expended on this book. One cannot examine it critically in detail without admiration for the thoroughness with which the editors have done their work. The interesting experiment of collaboration of three scholars, each eminent in his field has been justified in the result. My own tentative estimate of the merits of the book as a teaching tool is sufficiently attested by the fact that for the first time in the many years in which I have taught the subject, I have been led to forsake Professor Beale's book and adopt for my class in the year 1937-38 this new work. Whether after a trial I shall continue to use it or shall return to Beale, I cannot predict. There are certain features of arrangement and material which promise to suit my personal idiosyncracies as a teacher; but whether as a whole this new material will lend itself better to my purposes than Beale, I cannot decide without a trial. I am certain, however, that no book which I have yet seen adequately answers the

5. 109 N. Y. Misc. 696, 181 N. Y. Supp. 336 (Surr. Ct. 1919).

6. [1930] 1 Ch. 377.

demands which my experience and fundamental theories have raised. The class book for which I have been looking through the years is still to be compiled.

Joseph W. Bingham.†

DIPLOMATIC CORRESPONDENCE OF THE UNITED STATES: INTER-AMERICAN AFFAIRS, 1831-1860 (Vol. VII, Great Britain). Selected and Arranged by William R. Manning. Carnegie Endowment for International Peace, Washington, D. C., 1936. Pp. xxxi, 785. Price: \$5.00.

This is the eleventh volume of diplomatic correspondence on Inter-American affairs published under the competent editorship of Dr. Manning in the past dozen years, and five more volumes are reported in press. With marvelous industry Dr. Manning has carried on this task in addition to his regular duties in the Department of State. The materials published contribute to filling the gap between the old series of *American State Papers* and the volumes of *Diplomatic Correspondence* issued by the Department of State in later years. Most of the documents are now published for the first time or are, for the first time, printed in full. The editorial work has been done conscientiously and excellently. The only criticism is the ungrateful one that the footnotes might have furnished more supplementary information, cross references, and bibliographical data. Wisely the editor has sacrificed those useful but time-consuming elaborations to the basically important task of getting a large mass of documents into print as rapidly as possible.

Communications between the Department of State and the American Legation in London and between the Department of State and the British Legation in Washington, in so far as they relate to Inter-American affairs, with some supplementary items, make up this volume. Problems of trans-Isthmian communications and of British claims in Central America occupy much space. Cuban and Texan affairs are the two other topics which required extended discussion. Of the 456 documents only 72 antedate the inauguration of President Taylor; the rest belong to the twelve years 1849 to 1860 inclusive.

In number of items included the Secretaries of State rank: Marcy, Cass, Clayton, Webster, Buchanan, Calhoun. Since Marcy is the least well-known of the group, his despatches deserve special consideration and they produce an impression very favorable to his ability in spite of the low grade ore which required his attention. Clayton's work reveals abilities which have failed of recognition because of the ill-omened treaty which heralds his name for unpardonable stupidity. Of the despatches emanating from the American ministers in London, Abbott Lawrence, James Buchanan, and George M. Dallas, in order, were the principal contributors. Sir Henry Bulwer, the unfortunate Mr. Crampton, and Lord Napier, in order, were the British ministers at Washington who were important contributors. The British Foreign Secretaries are but slightly represented: Lord Palmerston heads the list with five despatches which give little hint of his responsibility for British policy in this period, during three-fourths of which he was either Foreign Secretary or Prime Minister.

Though the conduct of American foreign policy in these years merits few encomiums and much criticism, British policy in American affairs was no more laudable and at best smacked of over-smartness. The subjects of discussion, today, seem trivial in importance, but principles of high importance were involved. The United States was working out the implications and applicability of the Monroe Doctrine. The basic issues of trans-Isthmian communications and of an inter-oceanic canal were of prime importance. Problems of interna-

---

† Professor of Law, Stanford University.

tional law affecting the right of search and other maritime and commercial issues were incidentally involved.

George Matthew Dutcher.†

HISTORY OF LABOR IN THE UNITED STATES (Vols. 3 and 4). The Macmillan Co., New York, 1935.

WORKING CONDITIONS AND LABOR LEGISLATION (Vol. 3). By Don D. Lescohier and Elizabeth Brandeis. Pp. 778. Price: \$4.50.

LABOR MOVEMENTS (Vol. 4). By Selig Perlman and Philip Taft. Pp. 683. Price: \$4.00.

These two volumes continue the comprehensive *History of Labor in the United States* (Volumes I and II) by Commons and Associates, published in 1918. The first two volumes described our economic political and social conditions through the nineteenth century, showing the influence of socialism, anarchism, Fourierism, individualism, and other ideas, on various labor movements. These earlier studies brought the history down to 1896. Volumes III and IV cover the period from 1896 to 1932. These, like the earlier volumes, are based largely on original sources, well-documented, and are written by specialists, thus making for the most comprehensive and authentic history of American labor that has yet appeared.

Professor Lescohier's treatment of his topic is arranged in three sections: Wage Earners, Working Conditions, Employers' Policies. An analysis of the growth and general characteristics of the American population precedes a minute and penetrating examination of the situation of our industrial workers between 1896 and 1932, with special reference to the consequences to them of our national immigration policy. There follows a statistical and analytical account of wages and living standards, working hours, the facts as to employment and unemployment, insurance and relief matters, public employment offices, apprenticeship, and industrial training systems, etc. The final section, that on Employers' Policies, includes a competent discussion of Scientific Management, Personnel Management, "Company Unions", Profit-Sharing, and other present-day problems.

The portion of Volume III, on Labor Legislation, by Miss Elizabeth Brandeis, in the opinion of the reviewer, might better have been expanded and published separately. Only certain major fields are discussed—Child Labor, Maximum Hours, Minimum Wages and Workmen's Compensation, together with various other forms of social insurance. No attempt is made to cover all phases of this great subject. A chapter on the administration of labor laws is followed by an able and lucid analysis of labor legislation and the Federal Constitution. Within the period, 1898 to 1932, the year 1917 is singled out not only because of the number and variety of laws then passed upon by the Supreme Court, but also because of the liberal construction given the legislative power involved. Miss Brandeis sees the period, 1917-1932, as characterized by strict construction of the power of government, both state and federal, to protect labor. Her discussion of this highly controversial subject is marked by a notable restraint and objectivity even though it is pointed out that "the action of the court in protecting the states from encroachments by Congress and Congress from encroachments by the states served effectively to delay certain kinds of protection much needed by wage earners." Miss Brandeis' account of the legal profession's contemporary attitude toward the *Lochner* and *Adkins* decision respectively, now so generally condemned, is a point of considerable interest. Of the then current articles in eight American Law Journals, only one definitely

† Professor of History, Wesleyan University, Connecticut.

criticized the *Lochner* case; whereas eighteen years later, only three such articles expressed approval of the *Adkins* decision, four being non-committal, and seven outspoken in condemnation. Miss Brandeis believes that "this difference suggests a change in public opinion, a decrease in the importance attached to such abstract rights as freedom of contract, and a growing desire to use the power of government to offset economic inequality." This is undoubtedly true but, since 1923, one finds only slim evidence in high judicial utterances to support belief that this shift in public opinion has gained recognition in the forum of the Supreme Court.

Volume IV, by Professor Perlman and Dr. Taft, is the story of job-conscious persons struggling to enlarge material and spiritual life both for themselves and their families. The emergence of unionism under the A. F. of L. in the eighteen eighties, the untoward and repeated defeats of labor in the steel industry, labor's greatest tactical success, that of the anthracite coal miners, the various radical labor movements, and also the employers' mass offensive in resistance—all these are thoroughly recounted and analyzed.

Throughout the book there runs the idea that radicalism, with American labor, is more apparent than real. Surely the A. F. of L. leadership under Samuel Gompers and William Green is essentially conservative, even aristocratic, emphasizing as it does skilled labor and craft unionism, while leaving the masses of unskilled to shift for themselves. The non-partisan political policy of Gompers still stands unchallenged, though prior to the New Deal such legislative enactments as the A. F. of L. was able to secure were proved, after judicial interpretation, to be little more than gold bricks. The authors but glance at the new industrialism of John L. Lewis, and only the most cautious opinion is ventured as to its future.

The publication of these two volumes brings to conclusion a study that will stand as a tribute to its authors, and particularly to its sponsor, Professor John R. Commons, under whose guidance and inspiration this comprehensive project was undertaken and carried out. Future historians of this great subject for the years after 1932 may well build on this work but, one fancies, they may have quite another story to tell.

*Alpheus Thomas Mason.†*

INTERNATIONAL LEGISLATION (Vol. 5). Edited by Manley O. Hudson. Carnegie Endowment for International Peace, Washington, D. C., 1936. Pp. xli, 1180. Price: \$4.00.

This volume is the fifth in the series on *International Legislation* which practitioners and students of international law owe to the industry and foresight of Professor Hudson. It is made possible by the aid of the Carnegie Endowment for International Peace. This volume covers the years 1929-1931. Where the originals of the treaties contained in the volume are in more than one language of equal authority, the author has printed the treaty in each language. As the author says in his preface: "A reproduction in two languages has many advantages, and it avoids the presentation of an incomplete text in many cases".

The volume contains all the multipartite instruments "opened for signature or otherwise promulgated during the period from July 1, 1929, to December 31, 1931". The instruments included fall, it appears to the reviewer, into two classes, those which contain arrangements between a group of governments for the settlement of inter-governmental problems, and secondly, those agreements which seem to merit more accurately the term "international legislation" as they control the actions of the individuals forming the international society. Of

---

† Professor of Politics, Princeton University.

the first class are, notably, many treaties to carry out agreements contained in or resulting from the peace treaties. Prominent among these are the agreements in respect to the Treaty of Trianon, the agreements in respect to reparations, and the agreement concerning the regulation of Bulgarian reparations. These arrangements may be said to be contracts resulting from bargains between governments. Indirectly, they do, of course, contribute to the order of the international society, but they differ materially, it appears to the reviewer, from such treaties as that of Warsaw regulating the transport of passengers and merchandise by air, the treaty of 1931 regulating narcotic drugs and the treaty of Bangkok regulating smoking opium. These conventions contain rules regulating the actions of individuals and fixing their obligations. They are not the result of bargains between governments, such as are common in bilateral treaties and in multilateral treaties of the first class mentioned, but they are in a different sense international legislative instruments framed by technical persons. Their provisions are the result of give and take at a conference participated in for the greater part not by diplomats but by experts, and inspired by the necessity felt by the international society of a single rule to govern the subject matter of the convention. It is usual for non-governmental groups, private corporations or associations to take part in the deliberations of such conventions and to submit their suggestions as memorials, although they do not vote. Although only enforceable as against individuals by action of the governments, these conventions are international legislation in a different sense than the treaties of the first type.

Another type of this kind of convention is the admirable convention on naturalization laws, resulting from the work of the Conference for Codification of International Law held at The Hague in 1930, which is one of those treaties not yet entered into force which Professor Hudson has included as having "an important place in the history of legislative effort in the particular field to which it relates". Another treaty of the same type is the Convention for the Settlement of Certain Conflicts of Laws in Connection with Bills and Promissory Notes, another chapter in the succession of international agreements fixing the rules of conflict of laws.

An interesting variation of these conventions are those containing uniform laws on the subjects of bills of exchange and checks. These conventions recall the labors of the American Conference of Commissioners on Uniform State Laws. They engaged the signatory governments to introduce into their respective territories the model laws contained in annexes.

Of an intermediate type are conventions such as that providing for road signals and for maritime signals, each with annexes giving in detail the kind of signal to be used and the rules relating to its use. These treaties resemble the second class, since they are not so much bargains between governments as regulations of a subject requiring action by the governments in the interest of the international society. But they differ from the preceding group of treaties in that they regulate the functions of the government itself.

The volume contains instances of the establishment of an international agency, notably the convention in respect to the Bank of International Settlements, international machinery set up under a charter granted by Switzerland which Switzerland agrees with the other contracting states to maintain and not to alter without their consent.

The users of this volume will appreciate the valuable bibliographical and historical notes appended to each document and the list of states which have ratified.

*Joseph P. Chamberlain.†*

---

† Professor of Law, Columbia University.

## BOOK NOTES

EQUITY: A COURSE OF LECTURES. By F. W. Maitland. Edited by A. H. Chaytor and W. J. Whittaker. Revised by John Brunyate. Cambridge: at the University Press. New York: The Macmillan Co., 1936. Pp. xxiv, 343. Price: \$4.00.

As an introductory discussion upon the origins and nature of equity jurisdiction this book justifies its publication. It consists of twenty-one lectures which were delivered by Maitland, and five Notes by Mr. Brunyate explaining wherein certain of Maitland's theories have been modified by recent decisions and statutes.

It is to be regretted that the Editor does not elaborate upon the controversial points in the lectures. For instance, Maitland assumes that equity always acts in personam, and this premise is used as the foundation for much of his logic. Inasmuch as modern authority is inclined toward the view that equitable ownership consists of rights in rem as well as of rights in personam, a valuable addition to this book would be a Note upon that topic. Also, a fuller discussion of equitable remedies by means of a Note would give the reader a better balanced picture of equity.

However, the clarity of Maitland's exposition, and his emphasis upon the history of Equity make this book a description of this growing field of law which the embryo lawyer of today may profitably read.

M. F.

THE GOLD CLAUSE. (Vol. 2, 2d ed.). By Arpad Plesch. Stevens & Sons, Ltd., London, 1936. Pp. vii, 106.

American and German currency legislation has helped demonstrate that gold clause contracts are scattered throughout the civilized world; so are decisions relating thereto. Dr. Plesch here presents some twenty recent opinions of American and European courts, the latter being translated into English. Practically every one involves either multiple currency clauses,<sup>1</sup> creditors who are foreign nationals, or some other international feature.

The judgments are uniformly in favor of the creditor, even where the debtor is the government of the country whose court decided the case. The result is sometimes achieved by calling the clause a "gold value clause", and sometimes by refusing effect to the law abrogating the gold clause (even where the contract stipulates the application of American law) as being contrary to good morals.

Dr. Plesch maintains that these cases reveal the attitude of courts to narrow down the express statutory enactments interfering with the gold clause and to uphold the gold clause as far as possible. It should be borne in mind, however, that the American case dealing with gold bullion clauses has now been overruled by the United States Supreme Court,<sup>2</sup> and that the English decision requiring the British Government to pay on the basis of the gold dollar will probably be appealed to the House of Lords.

Two important gold clause decisions, namely *Machen v. United States*<sup>3</sup> and *Holyoke Water Power Co. v. American Writing Paper Co.*,<sup>4</sup> were rendered after the book's publication, and consequently could not be included.

Sydney S. Asher, Jr.†

† Gowen Memorial Fellow, University of Pennsylvania.

1. Cf. Nussbaum, *Multiple Currency and Index Clauses* (1936) 84 U. OF PA. L. REV. 569.

2. *Holyoke Water Power Co. v. American Writing Paper Co.*, 57 Sup. Ct. 485 (1937).

3. 87 F. (2d) 594 (C. C. A. 4th, 1937), 85 U. OF PA. L. REV. 846.

4. 57 Sup. Ct. 485 (1937).